TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 628.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

UNION MANUFACTURING COMPANY AND J. T. PRINCE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED SEPTEMBER 13, 1915.

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1 UNITED STATES OF AMERICA,
Southern District of Florida, ss:

December term.

In the District Court of the United States.

The grand jurors of the United States empanelled, sworn, and charged, in and for the Southern District of Florida, upon their oaths present:

Count 1.

That before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia, and was a common carrier engaged in transportation of certain property, to wit, rough, green, yellow pine lumber under six inches in thickness, for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid, and was a corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," and of the acts of Congress amendatory thereof and supplemental thereto.

2 That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve, the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States, and had published and kept open to public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed among other things the rate and charge for the transportation of said property, to wit, rough, green, yellow pine lumber under six inches in thickness in car load lots of the minimum weight of 24,000 pounds from the said Baden to said Greenville to be seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion; that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the Union Manufacturing Company, of Greenville, was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Florida, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden, to said Greenville: that throughout said period of time one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of, and a person acting for and employed by, the said Union Manufacturing Company: that is to say, said J. T. Prince was secretary treasurer and sales manager of said corporation, and as such had general charge and control of the shipments made and received by the said Union Manufacturing Company, of Greenville, and of the payment of freight charges therefor: and further that at all times throughout said period of time the foregoing facts
3 were well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during said period of time, on a certain day, to wit, the sixteenth day of November, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tariffs were in full force and effect, the said South Georgia Railway Company did transport from said Baden to said Greenville over its said route a carload lot of said property, to wit, green, rough, yellow-pine lumber under six inches in thickness then and there loaded in and upon a car bearing the initials G. S. & F. XXXXXXXXXXXX and the number 1531 for the said Union Manufacturing Company, of Greenville, to consignee, and then and there at said Greenville did deliver said property to said Union Manufacturing Company, that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company at said Greenville thereafter, to wit: On the sixteenth day of November, in the year of our Lord one thousand nine hundred and twelve, did unload said property from said car, and did then and there ascertain the number of feet of said property; and further that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company of Greenville, then and there unlawfully did, knowingly and wilfully, falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (which had been transported from said Baden to said Greenville in said car as aforesaid) to be 7200 XXXXXX XXXXXXXXXXXX; whereas in truth and in fact as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them then and there well knew the number of feet of said property was 9,074, and that upon and in con-
4 sequence of said false representation, false statement, and false report of weight, the said South Georgia Railway Company then and there did demand, charge, collect, and receive, and the said

Union Manufacturing Company, of Greenville, as consignee, did then and there pay for the said transportation of said property in said car from said Baden to said Greenville, a freight charge of $10.50, which is less by $2.74 than the lawful charge of $13.24 as provided in the schedules and tariffs aforesaid, and at a less rate than the aforesaid lawful established rate of seven dollars for each carload lot thereof, of the weight of 24,000 pounds excess in proportion.

And so the grand jurors aforesaid, upon their oaths aforesaid, do find that at the time and place and in the manner and form of this count of this indictment aforesaid, the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Greenville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully did knowingly and wilfully, by means of the device aforesaid and by false statement and false report of weight, obtain the said transportation of said property at less than the regular rates then established and in force on the line of transportation of said South Georgia Railway Company, and were and each of them was then and there guilty of fraud; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

5 Count two.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and find that before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia, and was a common carrier engaged in transportation of certain property, to wit, rough, green, yellow pine lumber under six inches in thickness for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid and was a corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," and of the acts of Congress amendatory thereof and supplemental thereto.

That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve,

the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States and had published and kept open to public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed, among other things, the rate and charge for the transportation of said property, to wit, rough, green, yellow-pine lumber under six inches in thickness in carload lots of the minimum weight of 24,000 pounds from said Baden to said
6 Greenville to be seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion; that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the said Union Manufacturing Company, of Greenville, was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Florida, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden, to said Greenville; that throughout said period of time one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of and a person acting for and employed by the said Union Manufacturing Company; that is to say, said J. T. Prince was secretary treasurer and sales manager of said corporation, and as such had general charge and control of the shipments made and received by the said Union Manufacturing Company, of Greenville, and of the payment of freight charges therefor; and further that at all times throughout said period of time the foregoing facts were well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during the said period of time, on a certain day, to wit, the twenty-first day of November, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tariffs were in full force and effect, the said South Georgia Railway Company did transport from said Baden to said Greenville, over its said route a carload lot of said property, to wit, green, rough, yellow pine lumber under six inches in thickness then and there loaded in and upon a car bearing the initials G. S. & F. XXXXXXXXXXX,
7 and the number 8590, for the said Union Manufacturing Company, of Greenville, as consignee, and then and there at said Greenville did deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company at said Greenville thereafter, to wit, on the twenty-second day of November, in the year of our Lord one thousand nine hundred and twelve, did unload said property from the said car, and did then and there ascertain the number of feet of said property; and further, that the said Union

Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company, of Greenville, then and there unlawfully, did knowingly and willfully falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of sa d property (which has been transported from said Baden to said Greenville in said car as aforesaid) to be 8,100; whereas in truth and in fact as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them then and there well knew the number of feet of said property was 9,107 and that upon and in consequence of said false representation, false statement, and false report of weight the said South Georgia Railway Company then and there did demand, charge, collect, and receive and the said Union Manufacturing Company, of Greenville, as consignee, did then and there pay for the said transportation of said property in said car from said Baden to said Greenville a freight charge of $11.39, which is less by $1.89 than the lawful charge of $13.28 as provided in the schedules and tariffs
8 aforesaid, and at a less rate than the aforesaid lawful established rate of seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion.

And so the grand jurors aforesaid upon their oaths aforesaid, do find that at the time and place and in the manner and form of this count of this indictment aforesaid, the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Greenville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully did knowingly and willfully by means of the device aforesaid and by false statement and false report of weight obtain the said transportation of said property at less than the regular rates then established and in force on the line of transportation of said South Georgia Railway Company, and were and each of them was then and there guilty of fraud, contrary to the form of the statue in such case made and provided, and against the peace and dignity of the United States.

9 Count three.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and find that before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia, and was a common carrier engaged in

transportation of certain property, to wit, rough, green, yellow pine lumber under six inches in thickness for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid, and was a corporation common carrier subject to the provisions of the act of Congress, approved February 4, 1887, entitled "An act to regulate commerce," and of the acts of Congress amendatory thereof and supplemental thereto.

That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve, the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States, and had published and kept open to public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed among other things the rate and charge for the transportation of said property, to wit, rough, green, yellow pine lumber under six inches in thickness in carload lots of the minimum weight of 24,000 pounds from said Baden to said Greenville to be seven dollars for each carload lot thereof, of the weight of 24,000 pounds, excess in proportion; that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the said Union Manufacturing Company of Greenville was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Florida, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden, to said Greenville; that throughout said period of time one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of and a person acting for and employed by the said Union Manufacturing Company, that is to say, said J. T. Prince was secretary treasurer and sales manager of said corporation, and as such had general charge and control of the shipments made and received by the said Union Manufacturing Company of Greenville and of the payment of freight charges therefor; and further, that at all times throughout said period of time the foregoing facts were well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during the said period of time, on a certain day, to wit, the twenty-second day of November, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tariffs were in full force and effect, the said South Georgia Railway Company

did transport from said Baden to said Greenville, over its said route, a carload lot of said property, to wit, green, rough, yellow pine lumber under six inches in thickness then and there loaded in and upon a car bearing the initials L & N XXXXXXXXXXX, and the
11 number 69422 for the said Union Manufacturing Company of Greenville as consignee, and then and there at said Greenville did deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company, at said Greenville, thereafter, to wit, on the 22nd day of November, in the year of our Lord one thousand nine hundred and twelve, did unload paid property from the said car, and did then and there ascertain the number of feet of said property; and, further, that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company, of Greenville, then and there unlawfully did, knowingly and wilfully, falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (which had been transported from said Baden to said Greenville in said car as aforesaid) to be 8,800; whereas, in truth and in fact, as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them, then and there well knew the number of feet of said property was 10,723; and that upon and in consequence of said false representation, false statement, and false report of weight the said South Georgia Railway Company then and there did demand, charge, collect, and receive, and the said Union Manufacturing Company, of Greenville, as consignee, did then and there pay for the said transportation of said property in said car from said Baden to said Greenville, a freight charge of $12.83, which is less by $2.81 than the lawful charge of $15.64, as provided in the schedules and tariffs aforesaid, and at a less rate
12 than the aforesaid lawful established rate of seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion.

And so the grand jurors aforesaid, upon their oaths aforesaid, do find that at the time and place and in the manner and form of this count of this indictment aforesaid, the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Greenville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully did, knowingly and wilfully, by means of the device aforesaid and by false statement and false report of weight, obtain the said transportation of said property at less than the regular rates than established and in force on the line of transportation of said South Georgia Railway Company, and were, and

each of them was then and there guilty of fraud; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

13 Fourth count.

And the grand jurors aforesaid upon their oaths aforesaid do further present and find that before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia, and was a common carrier engaged in transportation of certain property, to wit, rough, green yellow pine lumber under six inches in thickness for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid, and was a corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce" and of the acts of Congress amendatory thereof and supplemental thereto.

That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve, the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States, and had published and kept open to public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed among other things the rate and charge for the transportation of said property, to wit, rough, green, yellow pine lumber
14 under six inches in thickness in carload lots of the minimum weight of 24,000 pounds from said Baden to said Greenville to be seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion; that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the said Union Manufacturing Company, of Greenville, was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Florida, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden, to said Greenville, that throughout said period of time

one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of and a person acting for and employed by the said Union Manufacturing Company; that is to say, said J. T. Prince was secretary-treasurer and sales manager of said corporation, and as such had general charge and control of the shipments made and received by the said Union Manufacturing Company, of Greenville, and of the payment of freight charges therefor; and further, that at all times throughout said period of time the foregoing facts were well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during the said period of time, on a certain day, to wit, the twenty-fifth day of November, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tariffs were in full force and effect, the said South Georgia Railway Company did transport from said Baden to said Greenville, over its said route, a carload lot of said property, to wit, green, rough, yellow pine lumber under six inches in thickness then and there loaded in and upon a car bearing the initials C. I. & L. XXXXXXXXXXX,
15 and the number 5831, for the said Union Manufacturing Company, of Greenville, as consignee, and then and there at said Greenville did deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company at said Greenville thereafter, to wit, on the thirtieth day of November, in the year of our Lord one thousand nine hundred and twelve, did unload said property from the said car, and did then and there ascertain the number of feet of said property; and further, that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company, of Greenville, then and there unlawfully did knowingly and wilfully falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (which had been transported from said Baden to said Greenville in said car as aforesaid) to be 8,000, whereas, in truth and in fact, as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them then and there well knew, the number of feet of said property was 10,154; and that upon and in consequence of said false representation, false statement, and false report of weight the said South Georgia Railway Company then and there did demand, charge, collect, and receive, and the said Union Manufacturing Company, of Greenville, as consignee, did then and there pay for the said transportation of said property in said car from said Baden to said Greenville a freight charge of $11.66, which is less by $3.15 than the lawful charge of $14.81 as provided in the schedules and tariffs afore-
16 said, and at a less rate than the aforesaid lawful established

rate of seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion.

And so the grand jurors aforesaid, upon their oaths aforesaid, do find that at the time and place and in the manner and form of this count of this indictment aforesaid the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Greenville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully did knowingly and wilfully, by means of the device aforesaid and by false statement and false report of weight, obtain the said transportation of said property at less than the regular rates then established and in force on the line of transportation of said South Georgia Railway Company, and were, and each of them was, then and there guilty of fraud, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

17 Count five.

And the grand jurors aforesaid upon their oaths aforesaid do further present and find that before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia, and was a common carrier engaged in transportation of certain property, to wit, rough, green, yellow pine lumber under six inches in thickness, for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid, and was a corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," and of the acts of Congress amendatory thereof and supplemental thereto.

That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve, the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States, and had published and kept open to public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed among other things the rate and charge for the trans-

portation of said property, to wit, rough, green, yellow pine lumber
under six inches in thickness in carload lots of the minimum
18 weight of 24,000 pounds from said Baden to said Greenville
to be seven dollars for each carload lot thereof of the weight
of 24,000 pounds, excess in proportion; that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the said Union Manufacturing Company, of Greenville, was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Florida, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden, to said Greenville; that throughout said period of time one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of and a person acting for and employed by the said Union Manufacturing Company; that is to say, said J. T. Prince was secretary treasurer and sales manager of said corporation, and as such had general charge and control of the shipments made and received by the said Union Manufacturing Company, of Greenville, and of the payment of freight charges therefor; and further, that at all times throughout said period of time the foregoing facts were well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during the said period of time, on a certain day, to wit, the twenty-ninth day of November, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tariffs were in full force and effect, the said South Georgia Railway Company did transport from said Baden to said Greenville over its said route a carload lot of said property, to wit, green, rough, yellow pine lumber under six inches in thickness, then and there loaded in and upon a car
bearing the initials G. S. & F. XXXXXXXXXXXX, and the
19 number 1619 for the said Union Manufacturing Company, of
Greenville, as consignee, and then and there at said Greenville did deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company at said Greenville thereafter, to wit, on the thirtieth day of November, in the year of our Lord one thousand nine hundred and twelve, did unload said property from the said car, and did then and there ascertain the number of feet of said property; and further that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company, of Greenville, then and there unlawfully, did knowingly and wilfully falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (which had been transported

from said Baden to said Greenville in said car as aforesaid) to be 8,000, whereas in truth and in fact as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them then and there well knew, the number of feet of said property was 8,986, and that upon and in consequence of said false representation, false statement, and false report of weight the said South Georgia Railway Company then and there did demand, charge, collect, and receive, and the said Union Manufacturing Company, of Greenville, as consignee, did then and there pay for the said transportation of said property in said car from said Baden to said Greenville a freight charge of $11.66, which is less by $1.42 than the lawful charge of $13.10, as provided in the schedules and tariffs aforesaid, and at a less rate than the aforesaid lawful established rate of seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion.

And so the grand jurors aforesaid upon their oaths aforesaid, do find that at the time and place and in the manner and form of this count of this indictment aforesaid, the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Greenville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully did knowingly and wilfully, by means of the device aforesaid and by false statement and false report of weight, obtain the said transportation of said property at less than the regular rates then established and in force on the line of transportation of said South Georgia Railway Company, and were and each of them was then and there guilty of fraud; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count six.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and find that before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia, and was a common carrier engaged in transportation of certain property, to wit, rough, green, yellow pine lumber under six inches in thickness for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid, and was a corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," and of the acts of Congress amendatory thereof and supplemental thereto.

That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve, the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States, and had published and kept open to public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed among other things the rate and charge for the transportation of said property, to wit, rough, green, yellow pine lumber under six inches in thickness in carload lots of the mini-
22 mum weight of 24,000 pounds from said Baden to said Greenville to be seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion; that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the said Union Manufacturing Company, of Greenville, was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Flordia, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden to said Greenville; that throughout said period of time one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of and a person acting for and employed by the said Union Manufacturing Company; that is to say, said J. T. Prince was secretary-treasurer and sales manager of said corporation, and as such had general charge and control of the shipments made and received by the said Union Manufacturing Company, of Greenville, and of the payment of freight charges therefor; and, further, that at all times throughout said period of time the foregoing facts were well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during the said period of time, on a certain day, to wit, the twelfth day of November, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tariffs were in full force and effect, the said South Georgia Railway Company did transport from said Baden to said Greenville, over its said route a carload lot of said property, to wit, green, rough, yellow pine lumber under six inches in thickness then and there loaded in and upon a car bear-
ing the initials L. & N. XXXXXXXXXXX, and the number
23 68720, for the said Union Manufacturing Company, of Greenville, as consignee, and then and there at said Greenville did

deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company at said Greenville thereafter, to wit, on the twelfth day of November, in the year of our Lord one thousand nine hundred and twelve, did unload said property from the said car, and did then and there ascertain the number of feet of said property; and further, that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company, of Greenville, then and there unlawfully, did knowingly and wilfully falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (which had been transported from said Baden to said Greenville in said car as aforesaid) to be 8,100; whereas in truth and in fact as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them then and there well knew the number of feet of said property was 9,619, and that upon and in consequence of said false representation, false statement, and false report of weight the said South Georgia Railway Company then and there did demand, charge, collect, and receive, and the said Union Manufacturing Company, of Greenville, as consignee did then and there pay for the said transportation of said property in said car from said Baden to said Greenville a freight charge of $11.81, which is less by $2.22 than the lawful charge of $14.03 as provided in the schedules and tariffs aforesaid, and
24 at a less rate than the aforesaid lawful established rate of seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion.

And so the grand jurors aforesaid upon their oaths aforesaid do find that at the time and place and in the manner and form of this count of this indictment aforesaid the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Greenville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully, did knowingly and wilfully by means of the device aforesaid and by false statement and false report of weight obtain the said transportation of said property at less than the regular rates than established and in force on the line of transportation of said South Georgia Railway Company, and were and each of them was then and there guilty of fraud; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

25 Count seven.

And the grand jurors aforesaid upon their oaths aforesaid do further present and find that before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia and was a common carrier engaged in transportation of certain property, to wit, rough, green, yellow-pine lumber under six inches in thickness for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid and was a corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," and of the acts of Congress amendatory thereof and supplemental thereto.

That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve, the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States and had published and kept open to the public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed, among other things, the rate and charge for the transportation of said property, to wit, rough, green, yellow-pine lumber under six inches in thickness in carload lots of the mini-
26 mum weight of 24,000 pounds from said Baden to said Greenville to be seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion, that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the Union Manufacturing Company, of Greenville, was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Florida, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden to said Greenville; that throughout said period of time one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of and a person acting for and employed by the said Union Manufacturing Company; that is to say, said J. T. Prince was secretary-treasurer and sales manager of said corporation, and as such had

general charge and control of the shipments made and received by the said Union Manufacturing Company, of Greenville, and of the payment of freight charges therefor; and, further, that at all times throughout said period of time the foregoing facts were well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during said period of time, on a certain day, to wit, the thirteenth day of November, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tariffs were in full force and effect, the said South Georgia Railway Company did transport from said Baden to said Greenville over its said route a carload lot of said property, to wit, green, rough, yellow-pine lumber under six inches in thickness, then and there loaded in and upon a car bearing the initials L. & N. XXXXXXXXXXX and the number 70107, for the said Union Manufacturing Company, of Greenville, as consignee; and then and there at said Greenville
27 did deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company, at said Greenville, thereafter, to wit, on the thirteenth day of November, in the year of our Lord one thousand nine hundred and twelve, did unload said property from the said car, and did then and there ascertain the number of feet of said property; and further, that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company, of Greenville, then and there unlawfully did knowingly and willfully falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (which had been transported from said Baden to said Greenville in said car as aforesaid) to be XXXXXXX 7900, whereas, in truth and in fact, as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them then and there well knew, the number of feet of said property was 9,179, and that upon and in consequence of said false representation, false statement, and false report of weight, the said South Georgia Railway Company then and there did demand, charge, collect, and receive, and the said Union Manufacturing Company, of Greenville, as consignee, did then and there pay for the said transportation of said property in said car from said Baden to said Greenville a freight charge of $11.52, which is less by $1.86 than the lawful charge of $13.38 as provided in the schedules and tariffs aforesaid, and at a less rate than the aforesaid lawful established rate of seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion.

8 And so the grand jurors aforesaid upon their oaths aforesaid do find that at the time and place and in the manner and

form of this count of this indictment aforesaid the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Greenville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully did knowingly and willfully, by means of the device aforesaid and by false statement and false report of weight, obtain the said transportation of said property at less than the regular rates then established and in force on the line of transportation of said South Georgia Railway Company, and were and each of them was then and there guilty of fraud, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

29 Count eight.

And the grand jurors aforesaid upon their oaths aforesaid do further present and find that before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia, and was a common carrier engaged in transportation of certain property, to wit, rough, green, yellow-pine lumber under six inches in thickness for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid and was a corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," and of the acts of Congress amendatory thereof and supplemental thereto.

That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve, the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States, and had published and kept open to the public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed, among other things, the rate and charge for the transportation of said property, to wit, rough, green, yellow-pine lumber under six inches in thickness in carload lots of the mini-
30 mum weight of 24,000 pounds from said Baden to said Greenville to be seven dollars for each carload lot thereof of the

weight of 24,000 pounds, excess in proportion, that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the Union Manufacturing Company, of Greenville, was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Florida, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden to said Greenville; that throughout said period of time one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of and a person acting for and employed by the said Union Manufacturing Company; that is to say, said J. T. Prince was secretary-treasurer and sales manager of said corporation, and as such had general charge and control of the shipments made and received by the said Union Manufacturing Company, of Greenville, and of the payment of freight charges therefor; and, further, that at all times throughout said period of time the foregoing facts were well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during said period of time, on a certain day, to wit, the fifteenth day of November, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tarriffs were in full force and effect, the said South Georgia Railway Company did transport from said Baden to said Greenville over its said route a carload lot of said property, to wit, green, rough, yellow pine lumber under six inches in thickness then and there loaded in and upon a car bearing the initials L. & N. XXXXXXXXXXXX and the number 68720 for the said Union Manufacturing Company, of Green-
31 ville, as consignee, and then and there at said Greenville did deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company at said Greenville thereafter, to wit, on the fifteenth day of November, in the year of our Lord one thousand nine hundred and twelve, did unload said property from the said car, and did then and there ascertain the number of feet of said property; and further, that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company, of Greenville, then and there unlawfully did knowingly and wilfully falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (which had been transported from said Baden to said Greenville in said car as aforesaid) to be 8,700; whereas in truth and in fact, as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each

of them then and there well knew the number of feet of said property was 10,758; and that upon and in consequence of said false representation, false statement, and false report of weight the said South Georgia Railway Company then and there did demand, charge, collect, and receive, and the said Union Manufacturing Company, of Greenville, as consignee, did then and there pay for the said transportation of said property in said car from said Baden to said Greenville a freight charge of $12.67, which is less by $3.02 than the lawful charge of $15.69 as provided in the schedules and tariffs aforesaid, and at a less rate than the aforesaid lawful established rate of seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion.

32 And so the grand jurors aforesaid upon their oaths aforesaid do find that at the time and place and in the manner and form of this count of this indictment aforesaid the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Greenville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully did knowingly and wilfully by means of the device aforesaid and by false statement and false report of weight obtain the said transportation of said property at less than the regular rates then established and in force on the line of transportation of said South Georgia Railway Company, and were and each of them was then and there guilty of fraud; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

33 Count nine.

And the grand jurors aforesaid upon their oaths aforesaid do further present and find that before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia, and was a common carrier engaged in transportation of certain property, to wit, rough, green, yellow-pine lumber under six inches in thickness for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid and was a corporation common carrier subject to the

provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," and of the acts of Congress amendatory thereof and supplemental thereto.

That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve, the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States, and had published and kept open to the public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed, among other things, the rate and charge for the transportation of said property, to wit, rough, green, yellow-pine lumber under six inches in thickness in carload lots of the mini-
34 mum weight of 24,000 pounds from said Baden to said Greenville to be seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion, that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the Union Manufacturing Company, of Greenville, was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Florida, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden, to said Greenville; that throughout said period of time one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of and a person acting for and employed by the said Union Manufacturing Company, that is to say, said J. T. Prince was secretary-treasurer and sales manager of said corporation, and as such had general charge and control of the shipments made and received by the said Union Manufacturing Company, of Greenville, and of the payment of freight charges therefor; and further, that at all times throughout said period of time the foregoing facts were well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during said period of time, on a certain day, to wit, the twelfth day of December, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tariffs were in full force and effect, the said South Georgia Railway Company did transport from said Baden to said Greenville over its said route a carload lot of said property, to wit, green, rough, yellow pine lumber under six inches in thickness then and there loaded in and upon a car bearing the initials L & N XXXXXXXXXXXXX and the number 79839 for the said Union Manufacturing Company, of Green-
ville, as consignee, and then and there at said Greenville
35 did deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company, at said Greenville thereafter, to wit, on the thirteenth day of December, in the year of our Lord one thousand nine hundred and twelve, did unload said property from the said car, and did then and there ascertain the number of feet of said property; and, further, that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company, of Greenville, then and there unlawfully did knowingly and wilfully falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (which had been transported from said Baden to said Greenville in said car as aforesaid to be XXXXXX 8,000; whereas, in truth and in fact, as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them then and there well knew the number of feet of said property was 10,627; and that upon and in consequence of said false representation, false statement, and false report of weight the said South Georgia Railway Company then and there did demand, charge, collect, and receive, and the said Union Manufacturing Company, of Greenville, as consignee, did then and there pay for the said transportation of said property in said car from said Baden to said Greenville a freight charge of $11.24, which is less by $4.24 than the lawful charge of $15.48, as provided in the schedules and tariffs aforesaid, and at a less rate than the aforesaid lawful established rate of seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion.

36 And so the grand jurors aforesaid upon their oaths aforesaid do find that at the time and place and in the manner and form of this count of this indictment aforesaid the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Greenville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully did, knowingly and wilfully by means of the device aforesaid and by false statement and false report of weight, obtain the said transportation of said property at less than the regular rates then established and in force on the line of transportation of said South Georgia Railway Company, and were and each of them was then and there guilty of fraud; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

37 Count ten.

And the grand jurors aforesaid upon their oaths aforesaid do further present and find that before and on the first day of November, in the year of our Lord one thousand nine hundred and twelve, and

throughout the period of time from that day until and including the first day of January, in the year of our Lord one thousand nine hundred and thirteen, the South Georgia Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Georgia and was a common carrier engaged in transportation of certain property, to wit, rough, green, yellow pine lumber under six inches in thickness for hire wholly by railroad from a point on its route, to wit, Baden, in the State of Georgia, to another point on its route, to wit, Greenville, in the State of Florida, and in the Southern Judicial District of Florida aforesaid, and within the jurisdiction of this court.

And so throughout said period of time said corporation common carrier had an established through route for the transportation of said property in interstate commerce from Baden aforesaid to Greenville aforesaid and was a corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce" and of the acts of Congress amendatory thereof and supplemental thereto.

That more than thirty days before the said first day of November, in the year of our Lord one thousand nine hundred and twelve, the said South Georgia Railway Company had filed with the Interstate Commerce Commission of the United States and had published and kept open to the public inspection schedules and tariffs (which are too voluminous to be herein set forth in full), which said schedules and tariffs showed among other things the rate and charge for the transportation of said property, to wit, rough, green, yellow pine lumber
under six inches in thickness in carload lots of the minimum
38 weight of 24,000 pounds from said Baden to said Greenville
to be seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion; that said schedules and tariffs further provided that when the actual weight of a shipment of said property was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds per each 1,000 feet thereof.

That throughout said period of time the Union Manufacturing Company, of Greenville, was (and still is) a corporation organized and existing under and by virtue of the laws of the State of Florida, with principal place of business at said Greenville, and was engaged in shipping said property from various points, including said Baden, to said Greenville; that throughout said period of time one J. T. Prince, whose Christian name is to the jurors unknown, was an officer and agent of and a person acting for and employed by the said Union Manufacturing Company; that is to say, said J. T. Prince was secretary-treasurer and sales manager of said corporation, and as such had general charge and control of the shipments made and received by the said Union Manufacturing Company, of Greenville, and of the payment of freight charges therefor; and further that at all times throughout said period of time the foregoing facts were

well known to the said Union Manufacturing Company and to the said J. T. Prince.

That during said period of time, on a certain day, to wit, the second day of December, in the year of our Lord one thousand nine hundred and twelve, and while said schedules and tariffs were in full force and effect, the said South Georgia Railway Company did transport from said Baden to said Greenville over its said route a carload lot of said property, to wit, green, rough, yellow-pine lumber under six inches in thickness, then and there loaded in and upon a car bearing the initials G. S. & F. XXXXXXXXXXXXX and the number 3707 for the said Union Manufacturing Company, of Green-
39 ville, as consignee, and then and there at said Greenville did deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit.

That the said Union Manufacturing Company at said Greenville thereafter, to wit, on the second day of December, in the year of our Lord one thousand nine hundred and twelve, did unload said property from the said car, and did then and there ascertain the number of feet of said property; and further, that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting within the scope of his employment as agent, officer, and employee of said Union Manufacturing Company, of Greenville, then and there unlawfully, did knowingly and wilfully falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (which had been transported from said Baden to said Greenville in said car as aforesaid) to be XXXXXX 8,000, whereas in truth and in fact, as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them, then and there well knew, the number of feet of said property was 9,794, and that upon and in consequence of said false representation, false statement, and false report of weight the said South Georgia Railway Company then and there did demand, charge, collect, and receive, and the said Union Manufacturing Company, of Greenville, as consignee, did then and there pay for the said transportation of said property in said car from said Baden to said Greenville a freight charge of $11.25, which is less by $3.04 than the lawful charge of $14.29 as provided in the schedules and tariffs aforesaid, and at a less rate rate than the aforesaid lawful established rate of seven dollars for each carload lot thereof of the weight of 24,000 pounds, excess in proportion.

40 And so the grand jurors aforesaid upon their oaths aforesaid do find that at the time and place and in the manner and form of this count of this indictment aforesaid the said South Georgia Railway Company, a common carrier subject to the acts of the interstate commerce and to the acts amendatory thereof and supplemental thereto, did transport certain property aforesaid in interstate commerce for the Union Manufacturing Company, of Green-

ville, as consignee, and that the said Union Manufacturing Company, of Greenville, and the said J. T. Prince unlawfully did knowingly and wilfully, by means of the device aforesaid and by false statement and false report of weight, obtain the said transportation of said property at less than the regular rates then established and in force on the line of transportation of said South Georgia Railway Company, and were and each of them was then and there guilty of fraud, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

FRED BOTTS,
Assistant United States Attorney.
S. CARTER FORT,
Special Assistant to the United States Attorney.

(Endorsed:) United States District Court, Southern District of Florida. United States of America vs. Union Manufacturing Company and J. T. Prince. Indictment. Section 10 of the act to regulate commerce. A true bill: Geo. O. Holmes, foreman grand jury. Filed December 11, 1914. E. D. Dodge, clerk.

Bond of $1000.00 required. R. M. Call, judge.

41 In the District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA
vs.
UNION MANUFACTURING COMPANY AND J. T. PRINCE.

DEMURRER.

Come now the said defendants, Union Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of Florida, and J. T. Prince, by Powell & Pelot, their attorneys, and say that the indictment filed herein against them, on, to wit, the 11th day of December, A. D. 1914, and each and every count thereof, is bad in substance, and demurrable (and this demurrer is interposed to each of the counts of said indictment separately in all respects as if a separate demurrer has been interposed to each count), and for matters of law to be argued said defendants, and each of them, set forth and show as follows:

First. That said indictment does not, and neither does either or any of the counts thereof, show the commission by the defendants, or either of them, of any offense against the laws of the United States, or any of them.

Second. That said indictment does not, and neither does either or any of the counts thereof, set forth or show the commission by said defendants, or either of them, of any offense against the act of Congress approved February 4, 1887, an act to regulate commerce, or any act of Congress amendatory thereof or supplemental thereto.

42 Third. That it is not made to appear by any issuable allegations of fact contained in said indictment, or in either or any of the several counts thereof, that the rate at which said transportation of said property was obtained, in each and every instance, was a less or greater rate than would have been charged if the actual weight of said property had been ascertained and the correct scheduled rate charged.

Fourth. That it affirmatively appears by the said indictment, and by each and every count thereof, that the said several offenses charged, and each of them, if committed, were committed in a district other than the Southern District of Florida.

Fifth. That it affirmatively appears by said indictment, and each and every count thereof, that said offenses, and each of them, were not committed in the Southern District of Florida, or within the jurisdiction of this honorable court.

(Signed) POWELL & PELOT,
Attorneys for Defendants.

I hereby certify that the foregoing demurrer is well founded in law and proper to be filed.

(Signed) GEORGE M. POWELL,
Of Counsel for Defendants.

STATE OF FLORIDA,
County of Duval,
Southern District of Florida, ss:

George M. Powell, being first duly sworn, deposes and says
43 that he is one of the attorneys for the defendants in the above-entitled cause, and that the foregoing demurrer is not interposed for the purpose of delay.

(Signed) GEORGE M. POWELL.

Subscribed and sworn to before me this 24th day of May, A. D. 1915.

(Signed) L. N. SHOEMAKER,
Notary Public, State of Florida.

Commission expires 3/8/1919.

(Endorsed:) In District Court of United States, Southern District of Florida. United States of America vs. Union Manufacturing Company and J. T. Prince. Demurrer filed May 24th, 1915. E. D. Dodge, clerk. Powell & Pelot, attorneys at law, Jacksonville, Florida.

44 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA
vs.
UNION MANUFACTURING COMPANY AND J. T. PRINCE.

The indictment in this case is found under section 10, paragraph 3, of the interstate commerce law (1st supplement Rev. Statutes 687),

and the construction of such statute by the Circuit Court of Appeals for the Sixth Circuit in the case of Davis *vs.* United States, reported in 104 Federal Report, page 136, requires prosecutions for violations of said act to take place in the district where the goods are billed by the shipper and the delivery for transportation takes place. In the instant case the indictment shows that the delivery of the goods took place, not in the Southern District of Florida, but in Georgia.

Under these circumstances, and construing said statute in accordance with the views expressed by the Circuit Court of Appeals in the above cited case, the prosecution cannot be maintained in this district and the demurrer to the indictment therefore will be sustained on that ground, to which ruling of the court the United States excepts and exception is hereby noted.

This the 28th day of July, A. D. 1915.

(Signed) RHYDON M. CALL,
United States District Judge.

45 (Endorsed:) In the District Court of the United States for the Southern District of Florida. United States of America *vs.* Union Manufacturing Company and J. T. Prince. Order of court sustaining demurrer. Filed July 28, 1915. W. L. Devore, clerk.

This cause coming on to be heard upon the within demurrer and having been argued and submitted, it is considered that said demurrer be and the same is hereby sustained.

It is therefore considered that said indictment be and the same is hereby dismissed.

Done this 28th July, 1915.

RHYDON M. CALL, *Judge.*

Entered in District Court order book at page 258.

46 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
UNION MANUFACTURING COMPANY, A CORPORATION, AND J. T. Prince, defendants.

To the honorable RHYDON M. CALL,
Judge of said court:

Comes now the United States of America, by H. S. Phillips, United States attorney for the Southern District of Florida, and respectfully shows that on the 28th day of July, A. D. 1915, the court made an order in said cause sustaining a demurrer to the indictment in said cause.

And your petitioner, feeling itself aggrieved by the said ruling of the court entered therein as aforesaid, herewith petitions the court for an order allowing the United States of America to prosecute a writ

of error to the Supreme Court of the United States under the law in such cases made and provided.

The premises considered, your petitioner prays that a writ of error do issue in this behalf to the Supreme Court of the United States, sitting at Washington, for the correction of the errors complained of and herewith assigned.

(Signed.) H. S. PHILLIPS,
United States Attorney for Petitioner in Error.

47 (Endorsed:) In the District Court of the United States for the Southern District of Florida. United States of America vs. Union Manufacturing Co., a corporation, and J. T. Prince. Petition for writ of error. Filed July 29, 1915. W. L. Devore, clerk.

48 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
UNION MANUFACTURING COMPANY, A CORPORATION, AND J. T. Prince, defendants.

The foregoing cause coming on to be heard upon petition for a writ of error and the assignments of error submitted therewith, it is, upon consideration thereof, ordered that said petition be granted and that a writ of error be allowed.

Ordered this 29th day of July, A. D. 1915.

(Signed.) RHYDON M. CALL,
United States District Judge.

(Endorsed:) In the District Court of the United States for the Southern District of Florida. United States of America vs. Union Manufacturing Co., a corporation, and J. T. Prince. Order allowing writ of error. Filed July 29, 1915. W. L. Devore, clerk.

49 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
UNION MANUFACTURING COMPANY, A CORPORATION, AND J. T. Prince, defendants.

Comes now the United States of America, plaintiff in said cause, by H. S. Phillips, United States Attorney for the Southern District of Florida, and in connection with the plaintiff's petition for a writ of error in this cause assigns the following errors upon which plaintiff in error relies to reverse the judgment of the court herein, as appears of record, to wit:

1.

The court erred in sustaining the demurrer to the indictment in said cause.

2.

The court erred in holding that the allegations in the indictmen show that the offense charged was committed in the State of Georgi

3.

The court erred in the construction he placed upon paragraph 3 c section 10 of the interstate commerce act of February 4, 1887, in su taining the demurrer to the indictment in said cause.

Wherefore the United States, as plaintiff in error, prays that th judgment of said court be reversed.

(Signed) H. S. PHILLIPS,
United States Attorney for Plaintiff in Error.

50 (Endorsed:) In the District Court of the United States fo the Southern District of Florida. United States of Americ *vs.* Union Manufacturing Company, a corporation, and J. T. Princ Assignment of errors. Filed July 29, 1915. W. L. Devore, clerk.

51 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judg of the District Court of the United States for the Southern Di trict of Florida, Greeting:

Because in the record and proceedings, as also in the rendition o the judgment of a plea which is in the said district court, befo you, or some of you, between the United States of America and th Union Manufacturing Company and J. T. Prince on an indictmen for violation of section 10 of the act to regulate commerce, a man fest error hath happened, to the great damage of the said Unite States of America, as by their complaint appears. We being willin that error, if any hath been, should be duly corrected, and full an speedy justice done to the parties aforesaid in this behalf, do com mand you, if judgment be therein given, that then under your sea distinctly and openly, you send the record and proceedings aforesai with all things concerning the same, to the Supreme Court of th United States, together with this writ, so that you may have th same at Washington on the 13th day of September, 1915, in the sai Supreme Court, to be then and there held, that the record and pr ceedings aforesaid being inspected, the said Supreme Court ma cause further to be done therein to correct that error, what of righ and according to the laws and customs of the United States, shoul be done.

Witness, the honorable Edward D. White, Chief Justice of th Supreme Court of the United States the 13th day of August, in th year of our Lord one thousand nine hundred and fifteen.

W. L. DEVORE,
Clerk U. S. District Court,
Southern District of Florida.

Allowed by Rhydon M. Call, judge U. S. District Court.

52 (Endorsed:) In the United States District Court, Southern District of Florida. United States of America vs. Union Manufacturing Company, a corporation, and J. T. Prince. Writ of error. Filed August 13, 1915. W. L. Devore, clerk.

53 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Union Manufacturing Company and J. T. Prince, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 13th day of September, 1915, pursuant to a writ of error filed in the clerk's office of the District Court of the United States, wherein United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the sentence and judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 13th day of August, in the year of our Lord one thousand nine hundred and fifteen.

W. L. DEVORE,
Clerk U. S. District Court,
Southern District of Florida.

Service of the above citation is hereby accepted this 30th day of August, A. D. 1915.

BENNETT & HARRELL,
Attorneys for Defendant in Error.

(Endorsed:) United States District Court, Southern District of Florida. United States of America vs. Union Manufacturing Co. and J. T. Prince. Citation. Filed August 31, 1915. W. L. Devore, clerk.

54 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
UNION MANUFACTURING COMPANY, A CORPORATION, AND J. T. PRINCE, DEFENDANTS.

To GEORGE M. POWELL, Esquire,
Attorney for defendants in above styled cause:

Please take notice that I have on this, the 30th day of July, A. D. 1915, filed with the clerk of said court the direction for making up

transcript of record in said cause, copy of said directions being hereto attached.

(Signed) H. S. PHILLIPS,
United States Attorney.

Receipt of the foregoing notice, together with copy of directions to clerk for making up transcript of record acknowledged. This 31st day of July, A. D. 1915.

(Signed) POWELL & PELOT,
By GEO. M. POWELL,
Attorneys for Defendants.

55 (Endorsed:) In the District Court of the United States for the Southern District of Florida. United States vs. Union Manufacturing Co. et al. Notice of filing directions with clerk for making up transcript and acceptance or service. Filed August 10, 1915. W. L. Devore, clerk.

56 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
UNION MANUFACTURING COMPANY, A CORPORATION, AND J. T. Prince, defendants.

To W. L. DEVORE, Esquire,
Clerk of said Court:

You are hereby requested to prepare the transcript of record to be filed in the Supreme Court of the United States, pursuant to the writ of error allowed in the above styled cause, and include in such transcript of record the following, and no other, papers, to wit:

1. The indictment.
2. The demurrer to the indictment.
3. The order dated July 28, 1915, sustaining the demurrer to the indictment.
4. The petition for a writ of error.
5. The order granting the writ of error.
6. The assignments of error.
7. The writ of error.
8. Citation to defendant in error.
9. These directions.
10. Clerk's certificate.

And you will omit all other papers.

(Signed) H. S. PHILLIPS,
United States Attorney for Plaintiff in Error.

57 (Endorsed:) In the District Court of the United States for the Southern District of Florida. United States of America

vs. Union Manufacturing Co., a corporation, and J. T. Prince. Directions for making up transcript. Filed July 30, 1915. W. L. Devore, clerk.

58 UNITED STATES OF AMERICA,
Southern District of Florida:

I, W. L. Devore, clerk of the United States District Court, in and for the Southern District of Florida, do hereby certify that the foregoing pages numbered from one (1) to fifty-seven (57), inclusive, constitute a true and correct literal transcript of the record and files in the case of United States of America versus The Union Manufacturing Company and J. T. Prince, as prepared according to the directions of the United States district attorney.

I further certify that I have carefully compared the foregoing pages with the original papers which are now on file in this office and a part of the records of this court, of which I am the legal custodian.

In witness whereof I hereunto set my hand and affix the seal of this court at Jacksonville, in said district, this 31st day of August, A. D. 1915.

[SEAL.] W. L. DEVORE,
Clerk U. S. District Court, Southern District of Florida.

59 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the District Court of the United States for the Southern District of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, or some of you, between the United States of America and the Union Manufacturing Company and J. T. Prince on an indictment for violation of section 10 of the act to regulate commerce, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 13th day of September, 1915, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Edward D. White, Chief Justice of the Supreme Court of the United States the 13th day of August, in the year of our Lord one thousand nine hundred and fifteen.

W. L. DEVORE,
[SEAL.] *Clerk U. S. District Court, Southern District of Florida.*

Allowed by Rhydon M. Call, judge U. S. District Court.

60 (Endorsed:) United States District Court, Southern District of Florida. United States of America vs. Union Manufacturing Co. and J. T. Prince. Writ of error. Filed Aug. 13, 1915. W. L. Devore, clerk.

61 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Union Manufacturing Company and J. T. Prince, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 13th day of September, 1915, pursuant to a writ of error filed in the clerk's office of the District Court of the United States, wherein United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the sentence and judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 13th day of August, in the year of our Lord one thousand nine hundred and fifteen.

W. L. DEVORE,
[SEAL.] *Clerk U. S. District Court, Southern District of Florida.*

Service of the above citation is hereby accepted this 30th day of August, A. D. 1915.

BENNET L. HANELL,
Attorney for Defendant in Error.

62 (Endorsed:) United States District Court, Southern District of Florida. United States of America vs. Union Manufacturing Co. and J. T. Prince. Citation. Filed Aug. 31, 1915. W. L. Devore, clerk.

63 (Stamped:) Office of the clerk, Supreme Court U. S. Received Sep. 13, 1915.

Office of the clerk, Supreme Court U. S. Received Sep. 10, 1915.

c (Endorsed:) File No. 24911. S. Florida D. C. U. S. Term No. 628. The United States of America, plaintiff in error, vs. The Union Manufacturing Company and J. T. Prince. Filed September 13, 1915. File No. 24911.

O

Office Supreme Court, U. S.
FILED
DEC 4 1915
JAMES D. MAHER
Clerk

No. 625.

In the Supreme Court of the United States.

October Term, 1915.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

UNION MERCHANTS & MANUFACTURERS COMPANY AND J. T. PEDEN.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

BRIEF OF THE UNITED STATES, PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
UNION MANUFACTURING COMPANY AND J. T. Prince.
No. 628.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and in accordance with the provisions of the Criminal Appeals Act, 34 Stat. 1246, moves the court to advance the above-entitled cause for hearing on a day convenient to the court.

Defendants in error were indicted in the District Court of the United States for the Southern District of Florida for falsely representing to the South Georgia Railway Company, a Georgia corporation, the quantity of lumber contained in certain shipments made from Baden, Ga., to Greenville, Fla., via the lines of said railway company, the quantity of lumber contained in the various shipments not having been ascertained at point of shipment, and

the false representations having been made to the said railway company after arrival of the same at Greenville, Fla., in violation of paragraph 3, section 10, of the Act to Regulate Commerce, as amended.

A demurrer to the indictment was filed on the ground *inter alia* that the alleged offenses were not committed in the Southern District of Florida nor within the jurisdiction of the district court for that district.

The demurrer was sustained, the court holding that the statute under which the indictment was drawn requires prosecutions for violations thereof to take place in the district where the goods are billed by the shipper and the delivery for transportation takes place, and that in the instant case the indictment shows that such delivery of the goods took place not in the Southern District of Florida but in Georgia.

The case is of importance to the Government in future prosecutions for violations of this character and for that reason an early determination thereof is desirable.

Opposing counsel concur in this motion.

JOHN W. DAVIS,
Solicitor General.

DECEMBER, 1915.

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In the Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 628.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

v.

UNION MANUFACTURING COMPANY AND J. T. PRINCE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is a writ of error under the Criminal Appeals Act, 34 Stat., c. 2564, p. 1246, to review a judgment of the United States District Court for the Southern District of Florida sustaining a demurrer to an indictment against a consignee for falsely representing the weight of certain shipments of lumber, in violation of Section 10, paragraph 3, of the Act to Regulate Commerce as amended June 18, 1910, 36 Stat., c. 309, pp. 549–550. The ground of decision was that the prosecution should have been brought in the Southern District of Georgia, where the property

was billed and delivered to the carrier for transportation, and not in the Southern District of Florida, where the fraudulent representations were made.

The indictment contains ten counts, each alleging in substance as follows:

In the year 1912 the South Georgia Railway Company transported from Baden, Georgia, to Greenville, in the Southern Judicial District of Florida, a certain carload of lumber consigned to the Union Manufacturing Company, of Greenville. The exact weight of the lumber was not ascertained. The carrier's tariffs relating to the transportation of lumber provided that where the exact weight of a particular shipment is not ascertained, it may be computed on the basis of 5,000 pounds to each 1,000 feet. On receiving the shipment *at Greenville* the Union Manufacturing Company ascertained the number of feet as a basis for computing the freight. The number was falsely represented to the carrier *at Greenville* by the Union Manufacturing Company and J. T. Prince, its officer and agent, in consequence of which the carrier demanded and received for the transportation from Baden to Greenville a less rate than that provided in its regularly established tariffs.

Defendants demurred on the ground, amongst others, that the offense, if any, was committed in a district other than the Southern District of Florida. The court below sustained the demurrer upon the ground stated, saying:

> The indictment in this case is found under Section 10, paragraph 3, of the Interstate

Commerce Law (1st Supplement Rev. Statutes, 687), and the construction of such statute by the Circuit Court of Appeals for the Sixth Circuit in the case of *Davis* vs. *United States*, reported in 104 Federal Report, page 136, requires prosecutions for violations of said act to take place in the district where the goods are billed by the shipper and the delivery for transportation takes place. In the instant case the indictment shows that the delivery of the goods took place, not in the Southern District of Florida, but in Georgia.

Under these circumstances, and construing said statute in accordance with the views expressed by the Circuit Court of Appeals in the above cited case, the prosecution cannot be maintained in this district and the demurrer to the indictment therefore will be sustained on that ground. (R., 25–26.)

The pertinent provisions of Section 10, paragraph 3, of the Act to Regulate Commerce as amended June 18, 1910, are as follows:

> Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom as consignor or *consignee*, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false

> statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation * * * shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was *wholly or in part* committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court. (36 Stat., c. 309, pp. 549–550.) [Italics ours.]

THE QUESTION.

As above stated, the District Court construed the statute to require that prosecutions for its violation must be brought "in the district where the goods are billed by the shipper and the delivery for transportation takes place." (R., 26.)

Under the Criminal Appeals Act this court has jurisdiction only to review the construction thus placed upon the statute by the lower court (*United States* v. *Keitel*, 211 U. S., 370, 397–399; *United States* v. *Biggs*, 211 U. S., 507, 518; *United States* v. *Mason*, 213 U. S., 115, 122; *United States* v. *Stevenson*, 215 U. S., 190, 195–196, 199), and must accept its interpretation of the indictment (*United States* v.

Miller, 223 U. S., 599, 602; *United States* v. *Patten*, 226 U. S., 525, 535; *United States* v. *Winslow*, 227 U. S., 202, 216–217).

Accordingly, the question of the venue of prosecutions under Section 10, paragraph 3, of the Act to Regulate Commerce as amended June 18, 1910, is the only question presented.

THE ARGUMENT.

I.

THE GIST OF THE OFFENSE IS THE FRAUD AND NOT THE BILLING AND DELIVERY OF THE PROPERTY TO THE CARRIER. THEREFORE, THE OFFENSE WAS COMMITTED IN THE SOUTHERN DISTRICT OF FLORIDA, WHERE THE FRAUD WAS PERPETRATED.

The act provides in express terms that whoever as consignor or *consignee* shall do any of the enumerated acts "shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor." Obviously, therefore, the gist of the offense is the fraud and not the mere billing and delivery of the property to the carrier, except, of course, where the fraud consists of false billing. The decisions support this view.

In *Davis et al* v. *United States*, 104 Fed., 136, the defendants, at Cincinnati, Ohio, falsely represented the character and weight of certain property which they delivered to a carrier for transportation to Texas. They were indicted in Texas and the District Court for the Southern District of Ohio issued an order for their removal. On appeal to the Circuit Court of Appeals for the Sixth Circuit the order was reversed, the court holding that the

offense had been entirely committed in Ohio. Speaking through Judge (now Mr. Justice) Day, the court said:

> The thing aimed at in this section of the act is to prevent undue advantage which will accrue to a shipper who obtains lowered rates by means of false classification, billing, etc. This rate is manifestly obtained where the goods are billed by the carrier for transportation. *It is not the transportation of the goods which is prohibited and punished, but the obtaining of the transportation by means of false and fraudulent conduct, which is the gist of the offense.* (P. 139.) [Italics ours.]

In *In re Belknap*, 96 Fed., 614, the defendants, at Louisville, Kentucky, falsely represented the character of certain goods which they delivered to a carrier for transportation to Texas. They also were indicted in Texas and applied to the District Court for the Eastern District of Kentucky for a writ of *habeas corpus* to procure their release from the marshal who held them under a warrant of removal. The District Court directed that they be released, saying:

> The indictment contains four counts, the first of which seems to be an accusation that the defendants, after false billing, false classification, and a false representation of contents, evidently *made in Kentucky*, delivered the merchandise, or caused it to be delivered to the consignee in Texas. This accusation by no means appears to be a public offense under the clause of the statute above quoted. No-

> where does that statute make it an offense to deliver the goods to the consignee under any circumstances. * * * The court is clearly of opinion that, under a fair construction of the language of the indictment, the offense was necessarily committed in Kentucky alone. (P. 616.) [Italics ours.]

In *United States* v. *Hanley et al.*, 71 Fed., 672, certain of the defendants had been indicted under section 10, paragraph 3, of the Act to Regulate Commerce. The indictment, however, merely charged the transportation of the property at less than the published rate and did not allege any fraudulent conduct on the part of the defendants. In sustaining a motion to quash the indictment, District Judge Grosscup said:

> Now, the indictments against Thomson and Jenkins are nominally under these provisions (section 10, paragraph 3), but the substantive acts set forth are not false billing, false weighing, false classification, false representation of the contents of the package, or false report of its weight, nor any device akin thereto. The substantive act charged against these defendants is the receipt of the rebate of October, 1892. The indictment thus attempts, by indirection, to bring the shippers within one of the offenses that is not intended to run against the shippers at all. * * * The counts against these shippers must, therefore, be quashed. (P. 677.)

In *Armour Packing Company* v. *United States*, 153 Fed., 1, approved in 209 U. S., 36, 75, the United

States Circuit Court of Appeals for the Eighth Circuit, speaking through Judge Sanborn, in distinguishing between prosecutions for rebating under the Elkins Act and prosecutions for fraud under Section 10, paragraph 3, of the Act to Regulate Commerce, said:

> *The gist of the shipper's offense under paragraph 3 of section 10, as amended by the act of 1889 (25 Stat. 858, c. 382; U. S. Comp. St. 1901, p. 3160), is the fraud of obtaining transportation at a rate less than the established rate "by false billing, false classification, false weighing, false representation of the contents of the package or false report of weight or by any other device."* * * * Obtaining transportation at a rate less than the regular published rate, without committing any fraud or making any false representation to secure it, is not unlawful under this act of 1889. And an averment of the fraudulent device by which the transportation is secured is indispensable to an indictment founded upon that act, because *the fraudulent device is the substance of the offense.* (P. 16.) [Italics ours.]

We have already seen that in the present case the shipments were received by the defendants and the fraudulent representations to the carrier were made in the district in which the indictment was returned. Under the express language of the statute and the authorities just cited the offense was committed in that district. It was there that the unlawful purpose was conceived and executed, and the venue of the trial was thus made by the defendants themselves. *Brown* v. *Elliott*, 225 U. S., 392, 402.

In any possible view, however, the offense was committed *in part* in the Southern District of Florida where the fraudulent representations were made, and that is enough under section 10 as it has stood since prior to the time of the commission of the acts charged in the indictment. (Supra, pp. 3–4.)

Prior to 1910 section 10 provided that prosecutions for the offense denounced by it should be brought "within the district in which such offense was committed" (1st Sup. R. S., 687). By the amendment of June 18, 1910, the section was changed so as to provide for prosecutions "within the district in which such offense was *wholly or in part* committed" (36 Stat., c. 309, pp. 549–550).

Apparently the court below overlooked this change, as it cited the section as it stood before the amendment of 1910 (Rec., 25).

II.

SINCE FRAUDULENT REPRESENTATIONS BY A CONSIGNEE GENERALLY WOULD BE MADE IN THE DISTRICT IN WHICH HE RECEIVES THE SHIPMENT, THE CONSTRUCTION PLACED ON THE ACT BY THE COURT BELOW TO THE EFFECT THAT PROSECUTIONS MUST BE BROUGHT IN THE DISTRICT WHERE THE GOODS ARE BILLED AND DELIVERED TO THE CARRIER VIRTUALLY NULLIFIES THE ACT IN ITS APPLICATION TO CONSIGNEES.

Whilst exceptions are conceivable, in the vast majority of cases where a consignee obtains transportation for less than the established rates by falsely representing the weight or contents of a shipment, the false representations would be made and would produce their effect at the place where the consignee receives the shipment and there only.

Therefore, the district in which that place is located is the district in which the offense would be com-

mitted. If, as the court below held, the prosecution can not be brought in that district, then there can be no prosecutions at all in such cases, since the Constitution prohibits criminal prosecutions elsewhere than in the "State and district wherein the crime shall have been committed." (Art. VI of Amendments; see also Const., Art. III, sec. 2, cl. 3.)

III.

THE CASE OF DAVIS ET AL. V. UNITED STATES, RELIED ON BY THE COURT BELOW, DOES NOT SUSTAIN THE PROPOSITION THAT PROSECUTION MUST BE BROUGHT IN THE DISTRICT IN WHICH THE PROPERTY WAS BILLED AND DELIVERED TO THE CARRIER.

The court below based its ruling upon the decision of the Circuit Court of Appeals for the Sixth Circuit in *Davis et al.* v. *United States*, 104 Fed., 136, which it interpreted, erroneously, as we maintain, as holding that in all cases of this character the prosecution must be brought in the district in which the property was billed and delivered to the carrier.

As heretofore pointed out (*supra*, pp. 5–6), that case involved a situation where the defendants as consignors made the false representations in the same district in which the goods were delivered to the carrier. Upon these facts the court held that the false representations constituted the gist of the offense and that the offense was committed in the district in which the false representations were made. This is the interpretation given to the decision in *Armour Packing Company* v. *United States*, 153 Fed., 1, 16, approved in 209 U. S., 56, 75.

The fact that the false representations were made in the same district in which the goods were

delivered to the carrier led the court to use certain expressions which, viewed apart from the facts of the case, might appear to support the broad proposition for which the case was cited by the court below. For example:

> Congress in passing this act, and providing for the place of trial and punishment in a single district, evidently contemplated the consummation of the offense at the place *where the goods were billed by the shipper and the delivery for transportation takes place.* (P. 140.) [Italics ours.]

However, these are merely general expressions having application only to the facts of that particular case and having no application to a case, such as this, where the delivery was made in one district and the fraud was committed in another. *Cohens* v. *Virginia*, 6 Wheat., 264, 399; *Harriman* v. *Northern Securities Company*, 197 U. S., 244, 291.

It is submitted that if in this case the indictment had been returned in Georgia, as the defendants contend and the court below holds it should have been, the *Davis Case* would be well-nigh conclusive in support of the proposition that the indictment should have been returned in the Southern District of Florida.

CONCLUSION.

The judgment should be reversed.

G. CARROLL TODD,
Assistant to the Attorney General.

FEBRUARY, 1916.

○

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 628.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

UNION MANUFACTURING COMPANY AND J. T. PRINCE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNION MANUFACTURING COMPANY AND J. T. PRINCE, DEFENDANTS IN ERROR.

W. G. BRANTLEY,
Attorney for Defendants in Error.

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BRIEF FOR THE UNION MANUFACTURING COMPANY AND J. T. PRINCE, DEFENDANTS IN ERROR.

The Indictment.

As appears in the brief of the United States, the pending cause is a writ of error, under the Criminal Appeals Act, to review a judgment of the United States District Court for the Southern District of Florida, sustaining a demurrer to

an indictment against a consignee, for falsely representing the weight of certain shipments of lumber, in violation of section 10, paragraph 3 of the Act to Regulate Commerce as amended June 18, 1910, 36 Statute, chapter 309, pages 549-550.

The indictment contains ten counts, each count covering the shipment of one particular carload of lumber, and the essential allegations descriptive of the offense charged are the same in each count and are substantially as follows:

In the year 1912 the South Georgia Railway Company had on file certain tariffs and schedules, which included, among other things, a certain charge for a carload of lumber of the minimum weight of 24,000 pounds, excess in proportion, from Baden, in the State of Georgia, to Greenville, in the State of Florida, and provided that when the actual weight of a shipment of lumber was not ascertained "at point of shipment or at destination or in transit," the freight charges should be based upon an *estimated* weight of 5,000 pounds for each 1,000 feet thereof.

The Union Manufacturing Company is a corporation existing under the laws of the State of Florida, with its principal place of business at said Greenville, Florida, and was engaged in shipping lumber from various points, including Baden, Georgia, to Greenville, Florida. J. T. Prince, as Secretary-Treasurer and Sales Manager of said corporation, had general charge and control of the shipments made and received by the said corporation and "of the *payment* of freight charges therefor."

On a day named in 1912, while the aforesaid schedules and tariffs were in force, the said South Georgia Railway Company "did transport from said Baden to said Greenville," a carload of lumber "for the said Union Manufacturing Company, of Greenville, to consignee, and then and there, *at said Greenville*, did deliver said property to said Union Manufacturing Company; that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit."

That the said Union Manufacturing Company "at said Greenville *thereafter*"—that is, after the transportation and delivery of the carload of lumber—"did unload said property from said car *and did then and there ascertain* the number of feet of said property" and *"then and there* unlawfully did knowingly and wilfully falsely state and falsely represent to the said South Georgia Railway Company the said number of feet of said property (*which had been transported from said Baden to said Greenville in said car as aforesaid*), to be 7,200, whereas, in truth, and in fact, as the said Union Manufacturing Company, of Greenville, and the said J. T. Prince, acting as agent of the said Union Manufacturing Company as aforesaid, and each of them, then and there well knew the number of feet of said property was 9,074."

That by reason of such false statement and false representation the said Railway Company charged and received, and the said Union Manufacturing Company of Greenville "as consignee did then and there *pay for the said transportation* of said property a freight charge of $10.50, which is less by $2.74 than the lawful charge of $13.24 as provided in the schedules and tariffs aforesaid."

The concluding part of the indictment is that "in the manner and form of this count of this indictment" the said Railroad Company "did transport" in interstate commerce and the said Union Manufacturing Company, "as consignee," and the said J. T. Prince "unlawfully did, knowingly and wilfully, by means of the device aforesaid, and by false statement and false report of weight *obtain the said transportation* of said property at less than the regular rates then established and in force on the line of transportation of said South Georgia Railway Company, and each of them was then and there guilty of *fraud*." (Italics ours.) (R., 1, 2, 3.)

The Demurrer.

The indictment was demurred to because it set forth no violation of law and no violation of the Act to Regulate Commerce or any act of Congress amendatory thereof or supplementary thereto, and also upon these grounds:

> "Fourth. That it affirmatively appears by the said indictment and by each and every count thereof, that the said several offenses charged and each of them, *if committed*, were committed in a district other than the Southern District of Florida.
>
> "Fifth. That it affirmatively appears by said indictment and each and every count thereof, that said offenses and each of them were not committed in the Southern District of Florida or within the jurisdiction of this honorable court" (R., 25).

The court below entered an order, July 28, 1915, as follows:

> "This cause coming on to be heard upon the within demurrer and having been argued and submitted it is considered that said demurrer be, and the same is hereby sustained.
>
> "It is, therefore, considered that said indictment be, and the same is hereby dismissed" (R., 26).

On the same day, as appears in the brief of the United States, the court below entered a further order stating in substance that the indictment is found under section 10, paragraph 3, of the Interstate Commerce Law and that under the construction given this law in Davis *vs.* U. S., 104 Federal Reporter, page 36, prosecutions for violations of it are required "to take place in the district where the goods are billed by the shipper and the delivery for transportation takes place," and that "construing said statute in accordance with the views expressed by the Circuit Court of Appeals, in the above cited case, the prosecution cannot be maintained in this district and the demurrer to the in-

dictment, therefore, will be sustained *on that ground,* to which ruling of the court the United States excepts and exception is hereby noted." (Italics ours.)

The Statute Involved.

It is manifest that the provisions of section 10, paragraph 3 of the Act to Regulate Commerce as amended June 18, 1910, relate to interstate commerce, and do not create the offense of "fraud" *except in connection with transactions in interstate commerce.* As was stated by Judge (now Mr. Justice) Day, in Davis *vs.* U. S., 104 Federal Reporter, 140:

> "In passing this act Congress was regulating interstate commerce. It had power to legislate upon this subject only on interstate lines, and, recognizing this, it is set forth in the act that this provision shall not apply to transportation of passengers or property wholly within one State and not shipped to or from a foreign country, State or District."

The statute, at the time of Davis *vs.* U. S., read as follows:

> "Any person, and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully by false billing, false classification, false weighing, false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, *obtain transportation* for such property *at less than the regular rates* then established and in force on the line of transportation, shall be deemed guilty of *fraud,* which is hereby declared to be a misdemeanor, and shall upon conviction thereof in any *court* of the United States of competent jurisdiction *within the district in which such offense was committed,* be subject for each offense, etc." (Italics ours.)

It is obvious that the "fraud" here penalized is the *obtaining of transportation in interstate commerce at less than the regular rates* by any of the means specified in the act. The mere delivery of goods for transportation, or the mere false billing, false weighing, and false representation are not sufficient. To constitute the "fraud," transportation in interstate commerce must be obtained for less than the regular rates in force.

The law fixes the jurisdiction, for punishment, in a United States Court of competent jurisdiction, "within the district in which such offense was committed," the offense being that of obtaining transportation at less than the regular rates by some one or more of the means condemned by the law.

In 1910, which was subsequent to the case of Davis *vs.* United States, this particular statute was broadened by amendments, so as to cover and include the indirect as well as the direct acts of the persons named. It was made to read: "who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, etc.," and was further amended so as to prohibit "an attempt" to obtain transportation for such property at less than regular rates, as well as the actual obtaining of same.

The law was further amended by including other offenses as follows:

> "Or shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, *obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property,* whether with or without the consent or con-

> nivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation shall be deemed guilty of *fraud.*"

There was a further amendment with reference to the jurisdiction for punishment. The earlier provision as to jurisdiction, following immediately after the description of the offenses first condemned, as it did, was transposed to the end of the amended law, following the second class of offenses just above described, and amended to read "in any court of the United States of competent jurisdiction within the district in which such offense was *wholly or in part* committed."

Attention is thus called to the changes made in the law, in order to show that the pending indictment is based upon that part of the law in force at the time of Davis *vs.* The United States, and that the construction given the law in that case was applicable in the court below, and is now applicable.

ARGUMENT.

1.

There is no allegation in the indictment that the defendants obtained or attempted to obtain "any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport" the carload of lumber.

The specific allegation in the indictment is, that by reason of the alleged misrepresentation by the defendants of the number of feet of lumber contained in the car, the Railroad Company "did transport" in interstate commerce, and the defendants did "obtain the said transportation" at less than the regular rates. The allegations thus made in the concluding part of the indictment are directly contradicted by the

description in the indictment of the "device," and of the "false statement, and false report of weight," for it clearly appears that no representation, false or otherwise, as to weight or as to anything else was made by the defendants in order to "obtain said transportation," and that no "attempt to obtain said transportation" was made by any representation, false or otherwise, and that the railroad company *did not transport*, at any particular rate or because of any representation, false or otherwise, made to it, by the defendants.

The indictment is explicit that the carload of lumber was transported from Baden, in the State of Georgia, to Greenville, in the State of Florida, and was "delivered" to the defendants, and "that the actual weight of said carload lot of said property was not ascertained at said Baden or at said Greenville or in transit."

The allegation is that "thereafter," that is *after the transportation had been completed*, and the carload of lumber *delivered* to the consignee, that the alleged false statement as to the number of feet of lumber on the car was made. The allegations are direct and explicit that the false statement and misrepresentation complained of was made after the "delivery to the consignee" of the property, and that same related to certain lumber "which *had been transported* from said Baden to said Greenville in said car as aforesaid."

It may or may not be ,that the false statement or misrepsentation alleged, under the circumstances described, would constitute the offense of "fraud," or the offense "cheating and swindling," under the laws of the State of Florida, but it is manifest that same did not constitute the "fraud" prohibited by section 10, paragraph 3 of the Act to Regulate Commerce, because it was not an "attempt to obtain" nor was it the "obtaining" of "transportation" of said carload of lumber in interstate commerce at less than the regular rates. It may have been the "obtaining" of $2.74 of the money of the railroad company, but it was not the "obtaining" of "transportation" or the "obtaining" of it at any particu-

lar rate. The "transportation" had been "obtained," and presumably, "obtained," under the language of the indictment, in pursuance of an implied agreement to pay the regular tariff rate.

The effect on interstate commerce, if any of the alleged acts of the defendants is of the same nature as would have resulted if, after delivery of the carload of lumber to them, they had refused to pay the freight charges, or had paid them with a worthless check, or had "short changed" the railroad company in making payment of them in cash.

The "transportation" of the carload of lumber had been "obtained;" it had been completed, before any misrepresentation or false statement of any kind was made.

It is manifest, therefore, that the United States Court for the Southern District of Florida, where the carload of lumber was delivered to the consignee, after its "transportation" had been concluded had no jurisdiction to try the defendants upon the charge of "obtaining" or "attempting to obtain transportation" of the carload of lumber in interstate commerce at less than the regular rates, for that offense, which is the offense condemned and punished by paragraph 10, section 3 of the Act to Regulate Commerce, if committed at all, was certainly not committed within the jurisdiction of the Florida Court.

The brief of the United States (page 5) lays down the proposition that the "gist of the offense is the fraud, and not the billing and delivery of the property to the carrier. Therefore, the offense was committed in the Southern District of Florida where the fraud was perpetrated." This proposition seemingly confuses the "fraud," which the alleged acts of the defendants may or may not constitute under the laws of the State of Florida, with the particular "fraud" relating to interstate commerce, which is condemned and punished by section 10, paragraph 3 of the Act to Regulate Commerce. The United States Court for the Southern District of Florida had no jurisdiction, under the Act to Regu-

late Commerce, to try the defendants for any "fraud," except that whereby "the transportation" in interstate commerce of the carload of lumber was "obtained" at less than the regular rates, and it is clear that no transportation, at any tariff rate, resulted from, or was "obtained" by reason of, the alleged fraudulent acts committed in the State of Florida.

The "fifth" ground of the demurrer, therefore, "that it affirmatively appears by said indictment, and each and every count thereof, that said offenses, and each of them, were not committed in the Southern District of Florida, or within the jurisdiction of this honorable court," was properly sustained.

The court below held that "the prosecution cannot be maintained in this district," and that under the authority of Davis *vs.* U. S., reported in 104 Federal Reporter, page 136, the prosecution should be had "where the goods are billed by the shipper and the delivery for transportation takes place."

The brief of the United States complains (page 10) that:

> "If, as the court below held, the prosecution cannot be brought in that district, then there can be no prosecution at all in such cases, since the Constitution prohibits criminal prosecutions elsewhere than in the 'State and district wherein the crime shall have been committed.' (Art. VI of Amendments; see also Const., art. III, sec. 2, cl. 3.)"

It may well be that, if the United States has no other allegations to make against the defendants than are made in the pending indictment, that the indictment, if found in the State of Georgia, could not be sustained. The fact, however, if it be a fact, that the indictment would not lie in the State of Georgia is no argument for maintaining it in the State of Florida. The indictment must stand or fall, in the Florida court, on the allegations it contains, without regard to whether or not it would lie in some other jurisdiction. The contention in the brief of the United States (page 9)

that where a *consignee* obtains transportation for less than established rates by falsely representing the weight or contents of a shipment, such false representations must, in the majority of cases, be made and produce their effect "at the place where the consignee receives the shipment and there only" does not appear to be sound in fact or in logic.

In the pending case the defendants were both consignor and consignee, and the false billing or statement necessary to obtain transportation at less than the established rates not only could as well have been made by them in Georgia as in Florida, but it was necessary for them to have made it in Georgia in order to produce the *result* of a contract of carriage, whereby "transportation" was "obtained" at rates less than those established.

The Circuit Court of Appeals, Sixth Circuit, speaking through Judge (now Mr. Justice) Day, in Davis *vs.* United States, 104 Federal Reporter, 136, carefully construed the law now involved.

The court, on page 139 said:

> "This brings us to consider what is the nature of the offense and where does it become complete. The thing aimed at in this section of the act is to prevent undue advantage which will accrue to a shipper who obtains lowered rates by means of false classification, billing, etc. *This rate is manifestly obtained where the goods are billed by the carrier for transportation.* It is not the transportation of the goods which is prohibited and punished, *but the obtaining of the transportation* by means of false and fraudulent conduct which is the gist of the offense. What is it, then, to *obtain transportation* in the sense of this statute? We think that *false billing or other misrepresentation of the goods*, as stated in the act, *which results in their being received by the carrier under a contract of carriage thus fraudulently obtained is the obtaining of transportation within the meaning of the statute.* Then the fraudulent conduct of the shipper has borne its fruit, and every act and intent which constitutes the offense is com-

> plete. It is urged that the transportation of the goods to the full measure *contracted for* is necessary to constitute the crime. This argument ignores the fact that the punishment is not so much on account of the transportation as for the *wrongful conduct which has obtained it.*"

Again, on page 141, the court said:

> "If the carriage of the goods was the thing aimed at in this statute, and such was to have been deemed fraudulent *per se*, the crime might be regarded as a continuing one. As we have already said, it is the *obtaining of the transportation by the acts denounced in the statute* which is the gist of the offense."

There could not be any clearer exposition of the meaning of the statute than is thus given. The false billing, false classification, etc., denounced in the law must result (as the law read at the time of the opinion) in the goods offered for transportation "being received by the carrier under a contract of carriage thus fraudulently obtained." Under the law as it now reads, such fraudulent acts may be sufficient to constitute the fraud condemned, if they amount to *"an attempt* to obtain a contract of carriage at less than the regular rates." This being the meaning of the words of the act, "obtain or attempt to obtain transportation for such property at less than the regular rates," it follows, of necessity, that the offense can only be committed at the place where the goods are "delivered" to the carrier, or "offered" to the carrier "for transportation." Not only is this the logical and unescapable conclusion from the definition given, but the opinion of Judge Day further clearly states that "the thing aimed at," is to prevent the "undue advantage which will accrue to a shipper who obtains lowered rates by means of false classification, billing, etc.," and then adds as a separate sentence, and without qualification or exception, this language: "This rate is manifestly obtained where the goods are billed by the carrier for transportation."

In the brief of the United States (page 9) attention is called to the fact that by the amendment of June 18, 1910, the statute now involved was changed so as to provide for prosecutions "within the district in which such offense was *wholly or in part* committed," and the suggestion is made that apparently the court below overlooked this change. It is further added that "in any possible view, however, the offense was committed *in part* in the Southern District of Florida, where the fraudulent representations were made."

We would call attention to the fact that in the opinion of Judge (now Mr. Justice) Day, in Davis *vs.* U. S., *supra,* the reference to the provision of the act giving jurisdiction to punish comes after his conclusion that the offense condemned is committed "where the goods are billed by the carrier for transportation." He said, page 139):

> "This conclusion is in harmony with the provision of the statute which requires that the person guilty of such fraud shall, upon conviction thereof, in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine or imprisonment. This provision shows the intention of Congress to punish a crime which is committed in a district wherein jurisdiction is given for its punishment."

He also said, page 140:

> "Congress, in passing this act, and providing for the place of trial and punishment in a single district evidently contemplated the consummation of the offense *at the place where the goods are billed by the shipper and the delivery for transportation takes place.*"

Attention is also called to the fact that the change in the statute as to jurisdiction, from the language "within the district in which such offense was committed," to the language "within the district in which such offense was *wholly or in part* committed" does not affect in the slightest the offense

of "obtaining transportation," or "attempting to obtain transportation" at less than the regular rates by means of false statements, misrepresentations, etc. The jurisdiction for this particular offense remains and necessarily remains, under the authority of Davis *vs.* U. S., *supra,* at the place "where the goods are billed by the carrier for transportation," for it is there that the "contract of carriage" is made, and it is there that the fraudulent acts are done which "result" in the transportation being "obtained" at less than the regular rate, and it is there that the "attempt" by fraud to obtain such lower rates must be made.

The seeming enlargement of the place of jurisdiction by the insertion of the words "wholly or in part," relates to the additional offenses embraced by amendment within the statute. These additional offenses include various fraudulent acts and misrepresentations to "obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with, or growing out of the transportation of, or agreement to transport such property." It is manifest that these offenses may be committed "in whole" in one district, or they may be committed "in part" in one district, and "in part" in another district, and jurisdiction is given to punish them in any district where they are committed "in whole or in part."

The "fourth" ground of the demurrer, therefore, "that it affirmatively appears by the said indictment, and by each and every count thereof, that the said several offenses charged, and each of them, *if committed,* were committed in a district other than the Southern District of Florida," was properly sustained.

The court below properly held, *not that the offense charged, or any offense, had been committed within the jurisdiction of the Georgia court,* but that the law "requires prosecutions for violations of said act to take place in the district where the goods are billed by the shipper and the delivery for transportation takes place." This was a correct

ruling, and, it being entirely clear that the Florida court had no jurisdiction of the offense charged, the demurrer to the indictment was properly sustained.

Conclusion.

The judgment should be affirmed.

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February 14, 1916.

as to consignors of interstate shipments; and where, as in this case, false representations are made by the consignee in liquidation of the amount payable for freight at destination, the offense is wholly or in part committed at that place and the District Court of that district has jurisdiction of an indictment charging the offense to have been therein committed by the consignee.

The offense under the Act of June 18, 1910, is not analogous to that of obtaining money under false pretenses, but may be committed where the interstate transportation has already been completed and the amount due therefor remains to be adjusted, and with the same effect as though the false representations had preceded the delivery of the goods to the carrier for interstate shipment.

THE facts, which involve the construction of paragraph three of § 10 of the Act to Regulate Commerce as amended June 18, 1910, and the jurisdiction of the District Court of offenses thereunder, are stated in the opinion.

Mr. Assistant to the Attorney General Todd for the United States.

Mr. William G. Brantley for defendant in error.

MR. JUSTICE PITNEY delivered the opinion of the court.

This is a writ of error under the Criminal Appeals Act of March 2, 1907 (ch. 2564; 34 Stat. 1246), to review a judgment of the District Court for the Southern District of Florida sustaining a demurrer to an indictment for fraudulently misrepresenting the weights of certain shipments of lumber, in violation of the third paragraph of § 10 of the Act to Regulate Commerce, as amended June 18, 1910 (ch. 309; 36 Stat. 539, 549).[1] The demurrer

[1] "Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false

was sustained upon the ground that the statute, as construed by the Circuit Court of Appeals for the Sixth Circuit in *Davis* v. *United States*, 104 Fed. Rep. 136, requires the prosecution to take place in the District where the goods are billed by the shipper and the delivery for transportation takes place, which in this instance was not in the Southern District of Florida, but in Georgia.

The indictment contains ten counts, charging as many different offenses. They are alike in form, and a summary of the first will suffice. It recites that the South Georgia Railway Company was a common carrier by rail engaged in the interstate transportation of yellow pine lumber for hire from Baden, in the State of Georgia, to Greenville, in the Southern District of Florida, and had filed and published schedules and tariffs showing the rate and charge for transportation of such lumber under six inches in thickness in carload lots between those points to be $7 for each carload lot of the weight of 24,000 pounds, excess in proportion; that the schedules and tariffs further provided that when the actual weight of a shipment was not ascertained at point of shipment or at destination or in transit, the freight charges should be based upon an estimated weight of 5,000 pounds for each 1,000 feet; that the Union Manufacturing Company was and is a corporation engaged in shipping said property from Baden to Greenville, and J. T. Prince was its agent,

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weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; . . . shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine," etc.

having general charge and control of the shipments and the payment of freight charges therefor; that on a date specified, and while said schedules and tariffs were in effect, said Railway Company transported from Baden to Greenville for the Manufacturing Company a specified carload of yellow pine lumber under six inches in thickness, and delivered it at Greenville to the Manufacturing Company; that the actual weight of said carload lot was not ascertained at Baden, or at Greenville, or in transit; that the Manufacturing Company thereafter unloaded the lumber from the car and ascertained the number of feet thereof; and that the said Company, and Prince acting as its agent, well knowing the number of feet to be 9,074, then and there falsely and fraudulently represented to the Railway Company that the number of feet was 7,200, in consequence of which the Railway Company charged and the Union Lumber Company paid for the transportation of said lumber less than the lawful charge provided in the schedules and tariffs and at a less rate than the lawfully established rate.

In our opinion, the court below misapplied the decision in *Davis* v. *United States*, 104 Fed. Rep. 136. In that case, which arose under the Act as it stood before the amendment of 1910 (March 2, 1889, c. 382, 25 Stat. 855; 1 Supp. Rev. Stat. 687), the circumstances were very different from those now presented. The acts charged were misrepresentations by false billing and classification of certain property delivered by defendants to the railway company at Cincinnati, Ohio, for transportation thence to Dallas, Texas. The contract of carriage was made at Cincinnati, where defendants resided and carried on business, and the bill of exceptions showed that everything connected with the shipment of the goods except the carriage and delivery took place in Cincinnati. The court said (p. 139): "We think that false billing or other misrepresentation of the goods as stated in the Act, which

results in their being received by the carrier under a contract of carriage thus fraudulently obtained, is the obtaining of transportation within the meaning of the statute. Then the fraudulent conduct of the shipper has borne its fruit, and every act and intent which constitutes the offense is complete." It was accordingly held that the offense was indictable in the Southern District of Ohio, and not in the Northern District of Texas, within which was the destination of the goods. We are not called upon to either concede or question the propriety of this decision upon the facts that were there presented. General expressions contained in the opinion are of course to be interpreted in the light of those facts. Another case of the same kind is *In re Belknap*, 96 Fed. Rep. 614. These cases are not in point with the present. In each of them the fraud was that of the consignor. Here it is the consignee and its agent against whom fraud is charged. (The fact that the consignee was also the consignor is of no significance, since the fraud alleged was in what it did as consignee.) There the fraud inhered in the making of the contract of carriage; here it had to do with the liquidation of the amount payable for freight at destination.

The Act, by its very terms, applies to consignees as well as to consignors. But as it applies only to interstate transportation, the consignee is normally a resident of a different State, and therefore of a different District, from that where the goods are billed by the shipper and the delivery for transportation takes place. To say, therefore, that the Act contemplates an indictment only in the District where the goods are billed by the shipper is in effect to say that in most cases the consignee either may not be indicted at all or else must be indicted in a District of which he is not a resident, and which in many instances he may never have visited. We hold that the offenses charged in this indictment were "wholly or in

part committed" in the Southern District of Florida. See *United States* v. *Freeman*, 239 U. S. 117.

It is insisted in behalf of defendants in error that since the indictment shows that the transportation had been completed and the lumber delivered to the consignee before the alleged fraudulent representations were made, it cannot be said that the fraud charged amounted to either *obtaining or attempting to obtain transportation for the property* at less than the established rates. If the statute on which the indictment is based were analogous to the familiar acts rendering criminal the obtaining of money or other property by false pretenses, the argument would be cogent. Under such statutes, it is commonly if not universally held to be essential to criminality that the false pretense shall precede the obtaining of the property. *People* v. *Haynes*, 14 Wend. 547, 563, 564; reversing 11 Wend. 557; *State* v. *Church*, 43 Connecticut, 471, 479; *State* v. *Moore*, 111 N. Car. 667, 674; *State* v. *Willard*, 109 Missouri, 242, 247; *Watson* v. *People*, 27 Ill. App. 493, 496.

The statutory provision with which we are dealing has a very different purpose. It is not designed especially to protect the property rights of the carrier, for the offense is made equally punishable whether committed with or without the consent or connivance of the carrier. It originated in the 1889 amendment to the Act to Regulate Commerce (March 2, 1889, c. 382; 25 Stat. 855, 858; 1 Supp. Rev. Stat. 684, 687), and is but one of many provisions enacted by Congress with the object of preventing discriminations and favoritism as between shippers by requiring the publication of tariffs and prohibiting any departure from them. The prohibitions of the original act of February 4, 1887 (c. 104, §§ 2, 3, 6, 10; 24 Stat. 379; 1 Supp. Rev. Stat. 529), were addressed to the carrier alone. The 1889 amendment brought shipper and consignee within the scope of the law, both by enacting that false billing, etc., should be punishable criminally,

and by providing similar punishment for inducing discriminations by the payment of money or other thing of value, solicitation, or otherwise. The June 28, 1910, amendment (c. 309, § 10; 36 Stat. 539, 549), extended the range of the prohibition to certain other fraudulent practices by consignors and consignees committed for like purposes.

In denouncing as criminal "false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or other device or means" employed in order to "obtain or attempt to obtain transportation for such property at less than the regular rates then established," the lawmaker regarded not merely the physical transportation of the property, but the entire transaction through which consignor or consignee might seek to evade the policy of the Act to subject all interstate shipments to uniform rates of charge prescribed in published tariffs. In a case where for any reason the payment of the freight is not made prior to the delivery of the goods to the consignee but remains to be afterwards adjusted, the effort to obtain an advantage not permitted by the schedules may still be exerted through fraudulent representations influencing the adjustment of the freight, with precisely the same effect as if the representations had preceded delivery of the goods. When this is accomplished, there is a fraudulent obtaining of transportation at less than the established rate, within the meaning of the prohibition. Thus it needs only that we interpret the statute according to the plain meaning of the terms employed, in the light of subject-matter and context, in order to conclude, as we do, that the acts set forth in this indictment are punishable criminally under the Act.

The judgment of the District Court will be reversed, and the cause remanded for further proceedings in conformity with this opinion.

UNITED STATES OF AMERICA *v.* UNION MANUFACTURING COMPANY.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 628. Argued February 28, 1916.—Decided April 3, 1916.

The offense of false billing and representations specified in the third paragraph of § 10 of the Act to Regulate Commerce as amended June 18, 1910, c. 309, 36 Stat. 549, applies to consignees as well